

**RULES
OF
TENNESSEE DEPARTMENT OF HUMAN SERVICES
TENNESSEE BUSINESS ENTERPRISES**

**CHAPTER 1240-6-3
ASSIGNMENT OF MANAGERS**

TABLE OF CONTENTS

1240-6-3-.01	Ready-for-Employment List	1240-6-3-.06	Transfer Eligibility
1240-6-3-.02	Temporary Managers	1240-6-3-.07	Bid Procedures
1240-6-3-.03	Categories of Facilities	1240-6-3-.08	Probationary Period - When Applicable
1240-6-3-.04	Certification	1240-6-3-.09	Demotions
1240-6-3-.05	Promotions	1240-6-3-.10	Order of Priority for Assignment

1240-6-3-.01 READY-FOR-EMPLOYMENT LIST.

- (1) The Ready-for-Employment list shall contain the names of all licensed managers who remain certified and who are not permanently assigned to a facility. If certification expires, the manager's name shall be removed and he/she is no longer eligible to compete in the bidding process.
- (2) The Agency shall rank all managers on the Ready-for-Employment list in accordance with the amount of seniority which has been accrued and the list shall contain the certification for each manager. Managers having no seniority shall follow on the Ready-for-Employment List according to the date the Agency certified the manager as a licensed vendor. If two or more managers were certified as a licensed vendor on that date, then the academic scores achieved in the training classes shall be used for ranking purposes.
- (3) A manager accrues seniority when permanently or temporarily assigned to a facility or when he/she is placed on another status allowing for the accrual of seniority. This may only occur after a manager has been permanently assigned as manager of a facility.
- (4) The Agency shall have the responsibility of maintaining the Ready-for-Employment List and shall provide to the Secretary and all members of the Committee a copy together with updates as they occur.

Authority: TCA §§4-5-201 et seq., 71-1-105(12), 71-4-604(c), 14-14-404(c); 34 CFR 395.7(b), 34 CFR 395.7(c).
Administrative History: Original rule filed August 30, 1978; effective November 29, 1978. Amendment filed November 8, 1979; effective January 29, 1980. Amendment filed May 25, 1983; effective June 24, 1983. Amendment filed November 6, 1985; effective December 6, 1985. Amendment filed March 10, 1989; effective April 24, 1989. Amendment filed April 27, 1998; effective August 28, 1998.

1240-6-3-.02 TEMPORARY MANAGERS.

- (1) The Agency may, if circumstances require, place a facility under temporary management. The person assigned to the facility on a temporary basis may or may not be a licensed manager. Managers on the Ready-for-Employment list shall be given preference with respect to temporary assignments before the Agency resorts to a non-licensed manager.
- (2) After a manager is selected to operate a facility on a temporary basis, the Instrument of Facility Assignment must be executed on the first day of business and the attachments appended thereto as required by 1240-6-2-.02.
- (3) In the event of an assignment to a non-licensed manager, the Agency has the latitude to draft a contract binding the non-licensed manager to such a degree that the Agency is afforded adequate protection for

(Rule 1240-6-3-.02, continued)

its investment equipment and merchandise as well as to ensure compliance with these rules and regulations.

Authority: TCA §§4-5-201 et seq., 71-1-105(12), 71-4-604(c), 34 CFR 395.7(b)(c), and 32 CFR §260.1. **Administrative History:** Original rule filed June 9, 1981; effective August 18, 1981. Amendment filed February 28, 1963; effective May 16, 1983. Amendment filed May 25, 1983; effective June 24, 1983. Repeal and new rule filed November 6, 1985; effective December 6, 1985. Amendment filed March 10, 1989; effective April 24, 1989. Amendment filed April 27, 1998; effective August 28, 1998. Amendment filed April 27, 1998; effective August 28, 1998.

1240-6-3-.03 CATEGORIES OF FACILITIES

- (1) Each vending facility is classified into one or more of the following categories:
 - (a) Counter Service;
 - (b) All Vending;
 - (c) Combination Counter Service and Vending;
 - (d) On-Site Food Preparation;
 - (e) Cafeteria;
- (2) After consultation with the area representative(s) of the Committee, the classification of new facilities or the reclassification of existing facilities shall be made pursuant to the provisions of the Tennessee Business Enterprises Operations Manual.
- (3) No reclassification of existing facilities shall be made within thirty (30) days prior to the date when bids are to be solicited for such facilities.

Authority: TCA §§14-14-404, 71-4-604(c), 71-1-105(12); 34 CFR §395.7(c). **Administrative History:** Original rule filed August 30, 1978; effective November 29, 1978. Amendment filed November 8, 1979; effective January 29, 1980. Amendment filed June 9, 1981; effective August 18, 1981. Amendment filed May 25, 1983; effective June 24, 1983. Repeal and new rule filed November 6, 1985; effective December 6, 1985. Amendment filed March 10, 1989; effective April 24, 1989. Amendment filed April 27, 1998; effective August 28, 1998.

1240-6-3-.04 CERTIFICATION REQUIREMENTS.

- (1) All managers are certified by the Agency into one or more of the food service areas listed below:
 - (a) Counter service;
 - (b) Vending machines;
 - (c) Combination counter and vending machines;
 - (d) On-site food preparation;
 - (e) Cafeteria;
- (2) Certification shall be valid for only one year from the date the manager's license is issued, or one year from the date the manager last attended an Upward Mobility Training Class or one year from the date the last certification was obtained by the manager as a result of training.

(Rule 1240-6-3-.04, continued)

- (3) In lieu of the upward mobility training, managers may, at their own expense, take a course in food service at a college, university or state technical institute provided that prior approval is obtained in writing from the Agency and that a passing grade of "C" or better is achieved and a copy of the transcript is provided to the Agency. The cost of tuition and books may be charged as a business expense to the facility.
 - (a) If a manager loses his/her certification(s) for failure to comply with either of the conditions set forth in paragraphs (2) and (3) of this rule, the manager is subject to loss of license and removal from the facility if, within ninety (90) days from the loss of certification(s), the manager does not make application to be considered for the next entry level training class at a site jointly determined by the Agency and the Committee for the purpose of regaining the certification(s) which have been lost. The Agency must approve the application provided that the manager is not delinquent with the filing of any reports required by the Agency, is not indebted to the State and is not being currently subjected to any disciplinary action. If the manager is accepted, failure to pass the class denies the individual re-entry into the program and the loss of his/her facility.
 - (b) This paragraph shall have no application to a manager who has lost his/her certification(s) prior to the implementation of these rules. The manager may continue to operate his/her facility provided that the classification of the facility does not change. If the classification does change, the manager shall be given an opportunity to attend the next appropriate training class to obtain the certification(s) which may be required. Failure to pass the class shall result in the loss of license and removal from the facility.
 - (5) A manager's certification may be extended allowing him/her to attend the next available Upward Mobility Training Class in the closest major metropolitan city to the manager's facility if evidence is provided to the Agency documenting medical incapacity and/or other unavoidable circumstances of an extenuating nature which preclude his/her attendance at the Upward Mobility Training Class prior to the natural expiration of his/her certification.
 - (6) If the classification of a facility changes because of the type of food service being provided and the current manager does not possess the necessary certification or if Property Management requires that a different type of food service be offered, resulting in a change of classification of a facility, for which the manager is not certified, the manager must make arrangements, in writing, within thirty (30) days from the date he/she is notified in writing by the Agency of the change of classification to attend and successfully complete the next regularly scheduled training class. Failure to do so shall result in the manager being removed from the facility and placed on transfer status.
 - (7) For purposes of acquiring certification, vending machine training will be available upon written request and will be provided within a period of sixty (60) days from the date of the request. On-site food preparation and cafeteria management training will be scheduled at regular intervals and the schedule will be published and circulated to all managers at the beginning of each calendar year.
 - (8) Upward Mobility Training.
 - (a) For purposes of maintaining certification, the Agency shall provide for a minimum of two Upward Mobility Training Classes in each of the major metropolitan cities of Knoxville, Chattanooga, Nashville and Memphis. Each manager will be required to attend the Upward Mobility Training Class in the city closest to his/her facility.
 - (b) At the beginning of each calendar year, the Agency shall develop and publish to all managers a schedule which specifies the cities and the dates for the following training: Entry Level, On-Site Food Preparation, Cafeteria Management and Upward Mobility Classes.

(Rule 1240-6-3-.04, continued)

- (9) Those managers who attend Upward Mobility Training Classes or training classes to obtain Certification shall receive a training stipend, provided that the net proceeds of the manager for the preceding calendar year does not exceed eighty percent (80%) of the average net proceeds for all managers in the State. A determination will be made at the beginning of each fiscal year if funds can be made available for this purpose and the amount to be paid.

Authority: TCA §§4-5-201 et seq., 71-1-105(12), 71-4-604(c), 14-14-404; 34 CFR §395.7(c). **Administrative History:** Original rule filed August 30, 1978; effective November 29, 1978. Amendment Filed November 8, 1979; effective January 29, 1980. Amendment filed June 9, 1981; effective August 18, 1981. Amendment filed May 25, 1983; effective June 24, 1983. Repeal and new rule filed November 6, 1985; effective December 6, 1985. Amendment filed March 10, 1989; effective April 24, 1989. Amendment filed April 27, 1998; effective August 28, 1998.

1240-6-3-.05 PROMOTIONS.

- (1) Immediately prior to the mailing of the bid announcements, all managers are eligible to compete for promotional opportunities provided that:
 - (a) The manager is not on probation;
 - (b) The manager is not delinquent in the filing of any report required by the State of Tennessee and is not delinquent in the payment of any financial obligation owed to the State of Tennessee;
 - (c) The manager possesses the certification(s) required by the facility announced for bid;
 - (d) The manager has not refused an award of a facility during the preceding twelve (12) months; and
 - (e) The manager has not failed to appear for a scheduled interview during the preceding twelve (12) months. This provision shall not apply if the manager has withdrawn from the interview forty-eight (48) hours prior to the scheduled appearance by providing notice to the State Office.
- (2) A maximum of six (6) managers from those submitting bids shall be selected to compete for the promotion. The basis for this selection shall be seniority, provided the manager possesses the necessary certification.
- (3) After the candidates have been determined, each candidate will be interviewed within ten (10) working days by a panel consisting of one Agency representative, the area representative of the Committee and one independent business person.
- (4) The panel shall rate each candidate based upon his/her record of performance for the preceding twelve (12) months, responses received to questions, as well as personal appearance, demeanor and attitude. Each panel member shall rate each candidate according to the following:

First Choice	6 Points
Second Choice	5 Points
Third Choice	4 Points
Fourth Choice	3 Points
Fifth Choice	2 Points
Sixth Choice	1 Point

- (5) Tabulation Of Ratings And Award Of Facility.

(Rule 1240-6-3-.05, continued)

- (a) The rating shall be done by secret ballot. The chairman of the panel shall collect the ballots and tabulate the ratings. The successful manager shall be immediately offered the award. The manager must, at that time, either accept or reject the award. If the award is refused, the manager shall be precluded from having any further bids considered until one year has elapsed from the date of the refusal.
- (b) If a manager is scheduled for more than one interview as a result of his/her bids on a number of facilities contained in a single bid package, then the manager may wait until the conclusion of the last interview, in which the manager participates, to accept or reject the award of a facility.

Authority: TCA §§4-5-201 et seq., 71-1-105(12), 71-4-604(c), 14-14-104; 34 CFR 395.7(c). **Administrative History:** Original rule filed August 30, 1978; effective November 29, 1978. Amendment Filed November 8, 1979; effective January 29, 1980. Amendment filed June 9, 1981; effective August 18, 1981. Amendment filed May 25, 1983; effective June 24, 1983. Amendment filed November 6, 1985; effective December 6, 1985. Amendment filed December 11, 1986; effective January 25, 1987. Amendment filed March 10, 1989; effective April 24, 1989. Amendment filed April 27, 1998; effective August 28, 1998.

1240-6-3-.06 TRANSFER ELIGIBILITY.

- (1) The intent of a transfer is to assure, insofar as possible, employment for a manager who faces displacement which is not attributable to his/her conduct, attitude or lack of performance. A transfer shall not result in a substantial financial advantage or disadvantage to the Manager. In order to assure the effectiveness of this provision, the Manager's sales for the preceding twelve (12) months shall be calculated when it appears that a transfer is imminent. If a vacant facility for which the Manager is certified and which produces sales equal to those calculated for the displaced Manager, (meaning that sales may be fifteen percent (15%) above or fifteen percent (15%) below those calculated) then the manager may be considered, depending upon the manager's seniority and the number of other Managers competing for the same facility.
- (2) If more than one Manager is interested in the vacant facility, then an interview will be conducted pursuant to the provisions of 1240-6-3-.05.
- (3) Transfer eligibility may be established if:
 - (a) A determination is made to close the facility;
 - (b) The classification of the manager's facility changes and the manager fails to obtain the necessary certification;
 - (c) A permanent loss of customers equal to thirty percent (30%) of the population figures reflected on the bid announcement;
 - (d) If the Manager is on medically documented sick leave and requests to be placed on transfer status.
- (4) Transfer eligibility is valid for a period of two (2) years, during which seniority continues to accrue and eligibility is maintained for all benefits.
- (5) Transfer eligibility is lost if the Manager bids on and receives the award of a facility which produces sales within or which exceed the manager's transfer range.

Authority: TCA §§4-5-201 et seq., 14-14-404(c), 71-1-105(12), and 71-4-604(c); 34 CFR 395.7(c). **Administrative History:** Original rule filed August 30, 1978; effective November 29, 1978. Amendment filed November 8, 1979; effective January 29, 1980. Amendment filed June 9, 1980; effective August 18, 1981. Amendment filed May 25,

(Rule 1240-6-3-.05, continued)

1983; effective June 24, 1983. Amendment filed November 6, 1985; effective December 6, 1985. Amendment filed March 10, 1989; effective April 24, 1989. Amendment filed April 27, 1998; effective August 28, 1998.

1240-6-3-.07 BID PROCEDURES.

- (1) Bid announcements for a vending facility available for award shall be sent to all licensed managers within the State. Bid announcements shall contain the following information:
 - (a) Approximate annual gross sales;
 - (b) Categories of facility;
 - (c) Number of customers;
 - (d) Days and hours of operation;
 - (e) Recommendation for assistants;
 - (f) Availability of public transportation;
 - (g) Location - city, suburban, rural;
 - (h) Vicinity competition;
 - (i) Agency's intent to establish additional facilities;
 - (j) Property management future projections, if known.

The manager's signature on the bid announcement shall authorize the Agency to release to members of the interviewing panel information relative to the record of performance of the manager for the preceding twelve (12) month period. In addition, the signature of the manager on the bid announcement authorizes the Tennessee Department of Revenue to release to the Agency all the information relative to the tax status of the manager at his present or last facility operated.

- (2) The bid announcement shall remain open for a period of fourteen (14) days. Upon the closing of the bid announcement, the Agency shall verbally provide to the Secretary of the Committee of Blind Vendors a complete list of all managers who have submitted bids (to be followed in writing); whereupon the Secretary shall verbally certify to the Agency the seniority ranking and the certification possessed by each manager who has submitted a bid. This verbal certification shall be verified in writing within a period of five days. Thereafter the Agency shall make the facility award within a period of ten (10) working days pursuant to the procedures as set forth in 1240-6-3-.05 and the determination reached by the interviewing panel.
- (3) All bid announcements shall be posted in the US Mail, postage pre-paid in a sufficient amount to ensure delivery to the licensed managers. Documentation of this process shall be an affidavit attached to the computer generated mailing list, executed by the State Office personnel charged with the responsibility of the mailing, signifying the date of the posting and that all names and addresses on the list correspond with those on the envelopes addressed to the licensed managers.

Authority: TCA §§4-5-201 et seq., 71-1-105(12), 71-4-603, 71-4-604(c), 14-628, 14-14-404(c); 34 CFR 395.7(c).
Administrative History: Original rule filed August 30, 1978; effective November 29, 1978. Amendment filed June 9, 1981; effective August 18, 1981. Amendment filed May 25, 1983; effective June 24, 1983; effective June 24, 1983. Amendment filed November 6, 1985; effective December 6, 1985. Amendment filed March 10, 1989; effective April 24, 1989. Amendment filed April 27, 1998; effective August 28, 1998.

1240-6-3-.08 PROBATIONARY PERIOD - WHEN APPLICABLE.

(Rule 1240-6-3-.08, continued)

- (1) All persons who have successfully completed an entry level training program, including successfully completing on-the-job training, and who are thereafter licensed by the Agency, are eligible to submit bids. When these managers are awarded facilities on a permanent basis, each must serve a six month performance probationary period, during which each is not permitted to bid on another facility. If during this 6 month performance probation period, the manager violates any provision as specified in 1240-6-2-.03(1), the Agency may remove the manager from the vending facility provided that written notice of such removal is given to the manager ten (10) working days prior to any such removal. After the removal the Agency will determine whether or not to proceed with termination of license, require additional training or allow the manager's name to be placed on the Ready-for-Employment list.
- (2) Established managers may be placed on probation for disciplinary purposes only when the Agency determines that the vending facility is not being operated in accordance with:
 - (a) The rules and regulations governing the program;
 - (b) The terms and conditions of the permit;
 - (c) The terms and conditions of the operating agreement;
 - (d) Policies and procedures as specified in the Tennessee Business Enterprises Operations Manual;
 - (e) State law, the violation of which is, or reasonably may, result in financial or physical harm to the customers of the facility or other persons, the Department or the manager;
 - (f) Regulations of other agencies of the State of Tennessee which have regulatory authority directly related to the operation of a vending facility.

Notice of disciplinary probation shall be sent to the manager by Certified Mail (return receipt requested) or where less costly and more convenient, notices may be hand delivered by the Business Enterprises Counselor. The inception of probation shall be the date upon which the notice is received by the manager or his representative, as indicated on the signed receipt. If the representative accepts the notice, a copy of such notice shall be posted in the mail within twenty-four (24) hours from the time the representative accepted the notice. The notice of disciplinary probation shall contain the reason or reasons for probation steps to be taken, if any, to avoid termination, and the manager's right to appeal the Agency's action pursuant to Chapter 1240-6-11 of these rules. The probationary period shall be for a mandatory thirty (30) days except as prescribed in (1) of this subsection.

- (3) Managers who are placed on probation pursuant to subsection (1) and (2) of this section will not be permitted to bid.
- (4) If a manager is placed on disciplinary probation for the same offense for the third time during a twelve (12) month period, the manager loses all of his/her certification(s). In such an event, the manager is subject to loss of license and removal from the facility if, within ninety (90) days from the loss of certification(s), the manager does not make application to be considered for the next entry level training class at a site jointly determined by the Agency and the Committee for the purpose of regaining the certification(s) which have been lost. The Agency must approve the application provided that the manager is not delinquent with the filing of any reports required by the Agency, is not indebted to the State and is not being currently subjected to any disciplinary action. Failure to pass the class denies the individual re-entry into the program and the loss of his/her facility.

Authority: TCA §§4-5-201 et seq., 14-14-404(c), 71-1-105(12), 71-4-604(c); 32 CFR §260.1, 34 CFR 395.7(c), 45 CFR 1369.7(c). **Administrative History:** Original rule filed June 9, 1981; effective August 18, 1981. Amendment filed May 25, 1983; effective June 24, 1983. Amendment filed November 6, 1985; effective December 6, 1985.

(Rule 1240-6-3-.08, continued)

Amendment filed December 11, 1986; effective January 25, 1987. Amendment filed March 10, 1989; effective April 24, 1989. Amendment filed April 27, 1998; effective August 28, 1998.

1240-6-3-.09 VOLUNTARY WITHDRAWAL BY THE MANAGER OR MANDATORY REMOVAL OF THE MANAGER FROM THE FACILITY.

- (1) If the manager determines that it is in his/her best interest, for whatever reason, to withdraw from a permanently assigned facility. He/she may do so and be immediately placed on the "Ready-for-Employment List" provided that the withdrawal is not for the purpose of avoiding disciplinary action which is imminent or which has been initiated by the Agency. In the case of such a withdrawal, there shall be no accrual of seniority.
- (2) If a manager is dedicated to the appropriate management of his/her facility and is exerting all of his/her ability to effectively operate the business but is not able to do so because of the demands of the facility, the Agency has the right to remove the manager from the facility as opposed to initiating disciplinary action. Prior to any such removal, documented observations of inadequate performance must be presented to the manager at least forty-five (45) days before any removal can take place. This will allow the manager the necessary time to make any adjustments, if any can be made, to improve the efficiency and effectiveness of the facility's operation.
 - (a) If, after the expiration of the allotted time, the circumstances have not changed, the Agency shall immediately remove the manager from the facility and place him/her on demotion status and the "Ready-for-Employment List". The manager will maintain all benefits for a period of two (2) years and continue to accrue seniority for a like period of time.
 - (b) The manager shall not be eligible to compete for a facility by virtue of the demotion status if the facility's annual sales exceed seventy-five percent (75%) of those of the facility from which the manager was demoted.
- (3) The Agency shall remove a manager from a facility if there is reasonable evidence of a hazardous situation involving the manager and posing an immediate threat to the safety of the manager or others. This removal may be immediate if the circumstances require. Prior to or within twenty-four (24) hours of the removal, the Agency shall contact the area representative(s) of the Committee and inform them of the action.
- (4) In the event of the failure of the manager to fulfill the duties and discharge the responsibilities of operating the facility (for whatever reasons) or documented misconduct jeopardizing the existence of the facility and the image of the program, the Agency may declare that emergency circumstances exist; whereupon the manager may be immediately removed. In the case of such removal, the area representative(s) of the Committee shall be advised of the action prior to or within twenty-four (24) hours of the removal.
 - (a) In the event of a manager's removal under paragraphs (3) or (4) of this rule, the Agency must within ten (10) working days, take one of the following initiatives:
 1. Return the manager to the facility;
 2. Mandate re-training;
 3. Place the manager on the "Ready-for-Employment List"; or
 4. Initiate disciplinary action against the manager.
- (5) Due Process Procedures For Removals.

(Rule 1240-6-3-.09, continued)

- (a) If the manager is not returned to the facility within ten (10) working days of removal from the facility under paragraphs (3) and (4), an informal due process hearing by a hearing officer designated by the Commissioner of the Department of Human Services who was not involved in the decision to remove the manager shall be held at the manager's request within the ten (10) day period following removal from the facility.
- (b) The purpose of the hearing, which shall be informal in nature, shall be to permit the manager to present reasons why the removal is not appropriate. The Agency shall present reasons to the hearing officer to establish probable cause to support the immediate removal of the manager and the Agency shall have the burden of proof in the hearing.
- (c) The hearing officer shall make a ruling immediately following the conclusion of the hearing and shall reduce the findings and the conclusions to writing and shall supply copies of the ruling to the manager or the manager's representative and to the Agency. The hearing report shall become a part of the record in the disciplinary action which is initiated by the Agency involving the manager; provided, however, that the report's findings and conclusions shall not become evidence in such proceeding, which shall be de novo.
- (d) If the manager is not returned to the facility, the Agency shall initiate disciplinary action within the ten (10) day period and the manager may appeal for an evidentiary fair hearing pursuant to Chapter 1240-6-11.

Authority: TCA §§4-5-201 et seq., 71-1-105(12), 71-4-604(c), and 14-14-404(c); 34 CFR §395.7(b), 45 CFR §1368.7(b). **Administrative History:** Original rule filed June 9, 1981; effective August 18, 1981. Amendment filed May 25, 1983; effective June 24, 1983. Amendment filed November 6, 1985; effective December 6, 1985. Amendment filed March 10, 1989; effective April 24, 1989. Amendment filed April 27, 1998; effective August 28, 1998.

1240-6-3-.10 PERMANENT ASSIGNMENT OF A FACILITY FOR WHICH BIDS ARE NOT TO BE SOLICITED.

- (1) If eligibility has been established under these rules by a manager for permanent reassignment of a facility, the Agency may make the award of the facility to the manager, without soliciting bids, provided that all sales and certification criteria are met.
- (2) If more than one manager has established such eligibility and are competing for the same facility, then the provisions of 1240-6-3-.05 shall apply, and an interview shall be conducted for purposes of selecting the manager for the assignment.

Authority: TCA §§4-5-201 et seq., 14-14-401(c), 71-1-105(12), 71-4-604(c); 34 CFR 395.7. **Administrative History:** Original rule filed May 25, 1983; effective June 24, 1983. Amendment filed November 6, 1985; effective December 6, 1985. Amendment filed March 10, 1989; effective April 24, 1989. Amendment filed April 27, 1998; effective August 28, 1998.